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LEGISLATIVE COUNSEL
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97TH CONGRESS
1ST SESSION

S. 391

To amend the National Security Act of 1947 to prohibit the unauthorized disclosure of information identifying certain United States intelligence officers, agents, informants, and sources and to direct the President to establish procedures to protect the secrecy of these intelligence relationships.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 3 (legislative day, JANUARY 5), 1981

Mr. CHAFEE (for himself, Mr. GOLDWATER, Mr. BENTSEN, Mr. DANFORTH, Mr. DOMENICI, Mr. GARN, Mr. GLENN, Mr. HAYAKAWA, Mr. JACKSON, Mr. LAXALT, Mr. LUGAR, Mr. NUNN, Mr. PRESSLER, Mr. ROTH, Mr. SCHMITT, Mr. SIMPSON, Mr. WALLOP, Mr. HATCH, Mr. HUDDLESTON, and Mr. THURMOND) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend the National Security Act of 1947 to prohibit the unauthorized disclosure of information identifying certain United States intelligence officers, agents, informants, and sources and to direct the President to establish procedures to protect the secrecy of these intelligence relationships.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Intelligence Identities
4 Protection Act of 1981".

1 SEC. 2. (a) The National Security Act of 1947 is
2 amended by adding at the end thereof the following new title:
3 “TITLE VI—PROTECTION OF CERTAIN NATIONAL
4 SECURITY INFORMATION

5 “PROTECTION OF IDENTITIES OF CERTAIN UNITED
6 STATES UNDERCOVER INTELLIGENCE OFFICERS,
7 AGENTS, INFORMANTS, AND SOURCES

8 “SEC. 601. (a) Whoever, having or having had author-
9 ized access to classified information that identifies a covert
10 agent, intentionally discloses any information identifying such
11 covert agent to any individual not authorized to receive clas-
12 sified information, knowing that the information disclosed so
13 identifies such covert agent and that the United States is
14 taking affirmative measures to conceal such covert agent’s
15 intelligence relationship to the United States, shall be fined
16 not more than \$50,000 or imprisoned not more than ten
17 years, or both.

18 “(b) Whoever, as a result of having authorized access to
19 classified information, learns the identity of a covert agent
20 and intentionally discloses any information identifying such
21 covert agent to any individual not authorized to receive clas-
22 sified information, knowing that the information disclosed so
23 identifies such covert agent and that the United States is
24 taking affirmative measures to conceal such covert agent’s
25 intelligence relationship to the United States, shall be fined

1 not more than \$25,000 or imprisoned not more than five
2 years, or both.

3 “(c) Whoever, in the course of a pattern of activities
4 intended to identify and expose covert agents and with
5 reason to believe that such activities would impair or impede
6 the foreign intelligence activities of the United States, dis-
7 closes any information that identifies an individual as a
8 covert agent to any individual not authorized to receive clas-
9 sified information, knowing that the information disclosed so
10 identifies such individual and that the United States is taking
11 affirmative measures to conceal such individual’s classified
12 intelligence relationship to the United States, shall be fined
13 not more than \$15,000 or imprisoned not more than three
14 years, or both.

15 “DEFENSES AND EXCEPTIONS

16 “SEC. 602. (a) It is a defense to a prosecution under
17 section 601 that before the commission of the offense with
18 which the defendant is charged, the United States had public-
19 ly acknowledged or revealed the intelligence relationship to
20 the United States of the individual the disclosure of whose
21 intelligence relationship to the United States is the basis for
22 the prosecution.

23 “(b)(1) Subject to paragraph (2), no person other than a
24 person committing an offense under section 601 shall be sub-
25 ject to prosecution under such section by virtue of section 2

1 or 4 of title 18, United States Code, or shall be subject to
2 prosecution for conspiracy to commit an offense under such
3 section.

4 “(2) Paragraph (1) shall not apply in the case of a
5 person who acted in the course of a pattern of activities in-
6 tended to identify and expose covert agents and with reason
7 to believe that such activities would impair or impede the
8 foreign intelligence activities of the United States.

9 “(c) It shall not be an offense under section 601 to
10 transmit information described in such section directly to the
11 Select Committee on Intelligence of the Senate or to the Per-
12 manent Select Committee on Intelligence of the House of
13 Representatives.

14 “(d) It shall not be an offense under section 601 for an
15 individual to disclose information that solely identifies himself
16 as a covert agent.

17 “PROCEDURES FOR ESTABLISHING COVER FOR
18 INTELLIGENCE OFFICERS AND EMPLOYEES

19 “SEC. 603. (a) The President shall establish procedures
20 to ensure that any individual who is an officer or employee of
21 an intelligence agency, or a member of the Armed Forces
22 assigned to duty with an intelligence agency, whose identity
23 as such an officer, employee, or member is classified informa-
24 tion and which the United States takes affirmative measures
25 to conceal is afforded all appropriate assistance to ensure that

1 the identity of such individual as such an officer, employee,
2 or member is effectively concealed. Such procedures shall
3 provide that any department or agency designated by the
4 President for the purposes of this section shall provide such
5 assistance as may be determined by the President to be nec-
6 essary in order to establish and effectively maintain the se-
7 crecy of the identity of such individual as such an officer,
8 employee, or member.

9 “(b) Procedures established by the President pursuant to
10 subsection (a) shall be exempt from any requirement for pub-
11 lication or disclosure.

12 “EXTRATERRITORIAL JURISDICTION

13 “SEC. 604. There is jurisdiction over an offense under
14 section 601 committed outside the United States if the indi-
15 vidual committing the offense is a citizen of the United States
16 or an alien lawfully admitted to the United States for perma-
17 nent residence (as defined in section 101(a)(20) of the Immi-
18 gration and Nationality Act).

19 “PROVIDING INFORMATION TO CONGRESS

20 “SEC. 605. Nothing in this title may be construed as
21 authority to withhold information from the Congress or from
22 a committee of either House of Congress.

23 “DEFINITIONS

24 “SEC. 606. For the purposes of this title:

1 “(1) The term ‘classified information’ means infor-
2 mation or material designated and clearly marked or
3 clearly represented, pursuant to the provisions of a
4 statute or Executive order (or a regulation or order
5 issued pursuant to a statute or Executive order), as re-
6 quiring a specific degree of protection against un-
7 authorized disclosure for reasons of national security.

8 “(2) The term ‘authorized’, when used with re-
9 spect to access to classified information, means having
10 authority, right, or permission pursuant to the provi-
11 sions of a statute, Executive order, directive of the
12 head of any department or agency engaged in foreign
13 intelligence or counterintelligence activities, order of
14 any United States court, or provisions of any rule of
15 the House of Representatives or resolution of the
16 Senate which assigns responsibility within the respec-
17 tive House of Congress for the oversight of intelligence
18 activities.

19 “(3) The term ‘disclose’ means to communicate,
20 provide, impart, transmit, transfer, convey, publish, or
21 otherwise make available.

22 “(4) The term ‘covert agent’ means—

23 “(A) an officer or employee of an intelligence
24 agency or a member of the Armed Forces as-
25 signed to duty with an intelligence agency—

1 “(i) whose identity as such an officer,
2 employee, or member is classified informa-
3 tion, and

4 “(ii) who is serving outside the United
5 States or has within the last five years
6 served outside the United States; or

7 “(B) a United States citizen whose intelli-
8 gence relationship to the United States is classi-
9 fied information, and—

10 “(i) who resides and acts outside the
11 United States as an agent of, or informant or
12 source of operational assistance to, an intelli-
13 gence agency, or

14 “(ii) who is at the time of the disclosure
15 acting as an agent of, or informant to, the
16 foreign counterintelligence or foreign
17 counterterrorism components of the Federal
18 Bureau of Investigation; or

19 “(C) an individual, other than a United
20 States citizen, whose past or present intelligence
21 relationship to the United States is classified in-
22 formation and who is a present or former agent
23 of, or a present or former informant or source of
24 operational assistance to, an intelligence agency.

1 “(5) The term ‘intelligence agency’ means the
2 Central Intelligence Agency, a foreign intelligence
3 component of the Department of Defense, or the for-
4 eign counterintelligence or foreign counterterrorism
5 components of the Federal Bureau of Investigation.

6 “(6) The term ‘informant’ means any individual
7 who furnishes information to an intelligence agency in
8 the course of a confidential relationship protecting the
9 identity of such individual from public disclosure.

10 “(7) The terms ‘officer’ and ‘employee’ have the
11 meanings given such terms by sections 2104 and 2105,
12 respectively, of title 5, United States Code.

13 “(8) The term ‘Armed Forces’ means the Army,
14 Navy, Air Force, Marine Corps, and Coast Guard.

15 “(9) The term ‘United States’, when used in a ge-
16 ographic sense, means all areas under the territorial
17 sovereignty of the United States and the Trust Terri-
18 tory of the Pacific Islands.

19 “(10) The term ‘pattern of activities’ requires a
20 series of acts with a common purpose or objective.”.

21 (b) The table of contents at the beginning of such Act is
22 amended by adding at the end thereof the following:

9

**“TITLE VI—PROTECTION OF CERTAIN NATIONAL SECURITY
INFORMATION**

“Sec. 601. Protection of identities of certain United States undercover intelligence officers, agents, informants, and sources.

“Sec. 602. Defenses and exceptions.

“Sec. 603. Procedures for establishing cover for intelligence officers and employees.

“Sec. 604. Extraterritorial jurisdiction.

“Sec. 605. Providing information to Congress.

“Sec. 606. Definitions.”.

